

ORDINANCE 2007 - 16

ORDINANCE FOR THE REGULATION
OF CONCENTRATED ANIMAL FEEDING OPERATIONS

Be it enacted by the County of LaPorte as follows:

The Code of the County of LaPorte is hereby adding thereto a new chapter, to be Chapter _____, Concentrated Animal Feeding Operations to read as follows:

CONTENTS

- SECTION 1: INTENT & PURPOSE
- SECTION 2: DEFINITIONS
- SECTION 3: DEVELOPMENT STANDARDS
- SECTION 4: ODOR SETBACKS
- SECTION 5: SETBACK EXCEPTIONS
- SECTION 6: ENVIRONMENTAL PROTECTION
- SECTION 7: SEVERABILITY
- SECTION 8: EFFECTIVE DATE

THIS ORDINANCE IS APPLICABLE TO NEW CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) AND ACTIVE ANIMAL FEEDING OPERATIONS (AFO) THAT WISH TO EXPAND SUCH THAT AFTER THE EXPANSION IT WOULD BE DEFINED AS A CAFO.

1. INTENT & PURPOSE

- Establishing a procedure for the permitting of CAFOs.
- Regulating the location, development and the expansion of CAFOs.
- Protecting CAFOs from residential, commercial and public land use conflicts.
- Protecting agriculture's ability to grow and change.
- Protecting the land, water, and air resources of LaPorte County.
- Protecting LaPorte County's taxpayer's property values.
- Protecting human welfare, health, safety and well-being.

2. DEFINITIONS

"Animal Feeding Operation, AFO"

A lot or facility, other than an aquatic animal production facility, where both of these conditions are met:

- A. Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and
 - B. Crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over at least fifty percent (50%) of the lot or facility.
- Reference 327 IAC 5-4-3(b)(3)*

“Concentrated Animal Feeding Operation, CAFO”

An AFO that stables or confined as many as or more than the number of animals specified in any of the following categories. Two (2) or more AFOs under common ownership are considered to be a single CAFO, if the AFOs adjoin each other or use a common area for land application of manure, litter, or process wastewater.

- A. Seven hundred (700) mature dairy cows, whether milked or dry.
- B. One thousand (1,000) veal calves.
- C. One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle include, but are not limited to, heifers, steers, bulls, and cow/calf pairs.
- D. Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more.
- E. Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.
- F. Five hundred (500) horses.
- G. Ten thousand (10,000) sheep or lambs.
- H. Fifty-five thousand (55,000) turkeys.
- I. Thirty-thousand (30,000) laying hens or broilers, if the AFO uses a liquid manure handling system.
- J. One hundred twenty-five (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
- K. Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system.
- L. Thirty-thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system.
- M. Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system.
Reference 327 IAC 5-4-3(b)(4) & 5-4-3(b)(7)

“Shall”

Means that the requirement is mandatory, rather than optional.

“Non-Farm Residence”

An occupied dwelling or house located in Agriculture Zoned Property that is not controlled by the owner and/or operator of a CAFO.

“Waste Management System”

Any method of managing manure at a site, including: 1) manure storage structure, 2) manure transfer system, 3) manure treatment systems, such as a constructed wetland, vegetative management system, or wastewater treatment system, 4) feedlot, 5) confinement building, 6) waste liquid handling, storage, and treatment system. *Reference 327 IAC 16-2-44*

3. DEVELOPMENT STANDARDS

CONFORMANCE REQUIREMENTS

A Concentrated Animal Feeding Operation (CAFO) shall meet all applicable requirements of the Federal, State or Local government. In addition, CAFO applicants shall meet the following requirements.

- a) Obtain a pre-application permit from the Building Commission of LaPorte County prior to the submission of a permit application for approval from the Indiana Department of Environmental Management (IDEM).

1. A pre-application permit shall be granted to the CAFO upon submittal of the application to the Building Commission if the CAFO ordinance requirements are met.
 2. A CAFO is a "proposed" CAFO, for purposes of this ordinance, when a pre-application permit is submitted.
 3. A CAFO is an "existing" CAFO, for purposes of this ordinance, when approval and a permit from IDEM is issued.
- b) CAFO waste management system, compost facility, and mortality staging shall not be within 220 feet of any county road centerline. Any other developed portions of the facility shall abide by existing zoning setbacks for like structures.
 - c) The minimum lot size on which a CAFO shall be permitted is 10 acres.
 - d) ~~CAFOs~~ shall only be allowed on agriculturally zoned property.
 - e) A CAFO waste management system, compost facility, and mortality staging shall not be located within 100 feet of any side or rear property line unless permission for a reduced setback is granted by the adjoining landowner.
 - f) Adequate truck loading areas and access shall be provided. Ingress and egress shall be designed to avoid creation of traffic hazards and congestion, odor, dust, noise or drainage impacts.
 - g) All CAFOs shall obtain a "Route Permit" from the County Highway Department.
 - h) A copy of the Indiana Department of Environmental Management approval shall be submitted to the Building Commission prior to receiving a building permit.

4. **ODOR SETBACKS**

- a) Minimum setback for any CAFO waste management system from non-farm residences shall be as follows:
 1. 750 feet as long as the CAFO includes three (3) odor controls prior to the start-up of the operation.
 2. 1,000 feet as long as the CAFO includes two (2) odor controls prior to the start-up of the operation.
 3. 1,320 feet as long as the CAFO includes one (1) odor control prior to the start-up of the operation.
 4. 1,570 feet when the CAFO does not include any odor control prior to the start-up of the operation. Operations that do not include odor controls shall increase the minimum setback by 250 feet for each multiple greater than one (1) (rounded up to the nearest whole number), above the animal numbers required to be a CAFO.
(i.e. A dairy with 700 mature cows without odor controls would require a 1,570 foot setback; A dairy with 1,500 mature cows without odor controls would require a 1,830 foot setback; {[1,500-700]/700 - 1 = 0.14, round up to 1, 1,570 feet + [1 x 250 feet]}).

5. Odor controls include, but are not limited to, the controls listed in Table 1. Proven odor controls are listed in Table 1 for reference. Other proven odor controls not listed in Table 1 may be used to determine the required setback.

Table 1: Proven Odor Controls

Diet manipulation/Feed additives	Liquid/solid separation
Shelterbelts	Anaerobic treatment lagoon
Vegetation screens	Anaerobic digester
Windbreak walls	Manure storage surface aeration
Biofilters	Reduced anaerobic lagoon loading rate
Biomass filters	Aerobic treatment
Air filters	Ozonation
Aerodynamic deduster (air cleaner)	Urine/feces segregation
Wet scrubber (ventilation air)	Permeable covers (i.e. geotextile)
Catalytic converter	Impermeable covers
Vegetable oil spray (dust control)	Pit additives (i.e. biological, chemical)

- b) A new CAFO shall not locate the waste management system within a 1-mile buffer from the city limits of the cities of LaPorte, Michigan City, and Westville.
- c) An active animal feeding operation (AFO) that expands such that it is defined as a CAFO shall not locate a new waste management system within a 1-mile buffer from the city limits of LaPorte, Michigan City, and Westville or any closer than the setback between an existing waste management system and the city limits of LaPorte, Michigan City, and Westville (whichever is least restrictive).
- d) A new CAFO shall not locate the waste management system within a minimum of 1,570 feet or the prescribed setback from a non-farm residence required by this ordinance (whichever is greater) of an incorporated city or town limits.
- e) An active animal feeding operation (AFO) that expands such that it is defined as a CAFO shall not locate a new waste management system within a minimum of 1,570 feet, the prescribed setback from a non-farm residence required by this ordinance, or any closer than the setback between an existing waste management system and the city or town limits of a incorporated city or town (whichever is least restrictive).
- f) If the setback between an existing CAFO and non-farm residence is less than the setback prescribed in subsection (a) above, the existing CAFO may expand at the same location provided the new or expanded waste management system does not reduce the existing setback between the CAFO waste management system and non-farm residence unless written permission is given by the owner of the non-farm residence.
- g) An existing AFO proposing to expand such that after the expansion it would be defined as a CAFO may expand at the same location provided the following:
1. If the setback between the existing AFO and non-farm residence is less than the setback prescribed in subsection (a) above, the existing AFO may expand at the same location provided the new or expanded waste management system does not reduce the existing setback between the AFO waste management system and non-

farm residence, unless written permission is given by the owner of the non-farm residence.

2. If the setback between the existing AFO and non-farm residence is greater than the setback prescribed in subsection (a) above, the existing AFO may expand at the same location provided the new or expanded waste management system location maintains the setback distances prescribed in subsection (a) above, unless written permission is given by the owner of the non-farm residence.

h) A newly constructed non-farm residence shall not be located within the required setback by subsection (a)(4) of Section III of this ordinance from an existing or proposed CAFO waste management system for the number of animals at the existing or proposed CAFO. The minimum setback shall be 1,570 feet.

i) If a variance is granted by the BZA for a non-farm residence from the setback standards of this ordinance, the party obtaining the variance shall be required to enter into the following covenant protecting the CAFO's right to operate:

"In accepting this deed, grantees acknowledge that surrounding land is agricultural in usage; and grantees, and their successors in interest, are precluded from attempting to enjoin any farm operation within the prescribed setback of [(required setback)] required by the LaPorte County Concentrated Feeding Operation Ordinance because of nuisances which might result from said operation."

j) If a petition is granted for a new subdivision development in an agriculturally zoned property there shall be a condition of receiving a permit, the grantee must sign a agricultural clause that must be accompanied by a deed restriction to successive owners:

"Grantee/Owners of said lot(s) and their successors in title are on notice and understand that this residence/subdivision will be built in a predominantly agricultural area and that farming operations, to include animal feeding operations and other livestock operations, may be practiced in the area of this residence/subdivision. With this understanding, grantee/all owners of the lot(s) in this subdivision and their successors in title forego their right to bring claim against any agricultural operation in the area who has not been negligent."

5. SETBACK EXCEPTIONS

a) Grandfathered Non-conforming Uses. Any existing CAFO legally established prior to (date of adoption), 2007, shall be considered legal non-conforming use.

b) A non-farm residence may agree to a reduced setback between a new or expanding CAFO and the non-farm residence. A written agreement between the non-farm residence and CAFO must be filed with the Building Department prior to the issuance of a building permit.

6. ENVIRONMENT PROTECTION

a) The operator of a new, expanding, or existing CAFO shall comply with all State laws and rules, including the laws and rules administered by IDEM and with any permits granted by IDEM.

- b) All applicants who have or had ownership in any CAFO/AFO in the State of Indiana or any other state during the five years prior to the date of obtaining a pre-application permit must not have any unresolved violations with the Indiana Department of Environmental Management or any other corresponding or comparable local, state or federal regulatory agency. All such outstanding violations must be resolved before a building permit will be issued by the Building Commission.
- c) CAFOs shall abide by 312 IAC 12 Water Well Drilling and Ground Water and register all wells capable of withdrawing over 100,000 gallons per day or 70 gallons per minute with the Department of Natural Resources.
- d) A CAFO shall follow all manure application rules as defined in their IDEM permit and in accordance with their manure management plan.
- e) A CAFO/AFO shall not locate any portion of the waste management system within the one hundred (100) year frequency flood plain unless a Federal Emergency Management Agency, National Flood Insurance Program "Floodproofing Certificate" for non-residential structures is provided and the waste management system access is at least two (2) feet above the one hundred (100) year flood base elevation. *Reference 327 IAC 16-8-1(a)(3).*
- f) Groundwater test wells shall be required of all new approved 100-year floodplain CAFO sites. Placement, number, and depth of these systems shall be determined by a licensed engineer or hydro-geologist after the groundwater directional flow is determined. Sampling and testing of these systems for nitrates and bacteria shall be performed bi-annually by the La Porte County Health Department.
- g) If the La Porte County Health Department determines that surface or ground water has been or is being contaminated by the CAFO, the Health Department may order any reasonable or necessary corrective action to protect public health.

7. **SEVERABILITY**

The provisions of this ordinance are severable and the invalidity of a particular provision shall not invalidate any other provisions.

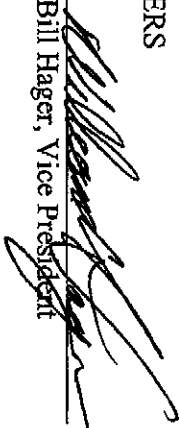
8. **EFFECTIVE DATE**

This ordinance shall be effective upon its passage and posting of law.

DATED this 4th day of September, 2007.

LAPORTE COUNTY BOARD OF COMMISSIONERS


Barbara Huston, President


Bill Hager, Vice President

Mike Bohacek, Member

ATTEST


Teresa Shuter, Auditor